IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5905 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHUSHILABEN PRAVINBHAI THAKKAR

Versus

SUB REGISTRAR, AHMEDABAD-5 (NAROL)

Appearance:

1. Special Civil Application No. 5905 of 2003

MR IM BENGALI for Petitioner No. 1-2/6

MR NEHAL R JOSHI for Petitioner No. 1-2/6

MR SOOD, Ld. AGP for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 31/07/2003

ORAL JUDGEMENT

1. Rule. Mr.Sood, learned AGP waives service of

rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. The only short point involved in this petition is whether the authority was justified in imposing the penalty for registration of the documents if the party did not present himself for confessing the execution of the document on account of the injunction granted by the competent Court and the higher forum.

3. The short facts of the case are that on 18-6-2001, petitioner No.2 sold the land to petitioner No.1 and for such purpose sale-deed was executed. The sale-deed was presented for registration by the purchaser. However, on 19-6-2001, one Mr.Vashrambhai Kukabhai Bharawad filed Special Civil Suit No.160/2001 against petitioner No.2/1 to 2/6 and the learned Civil Judge granted injunction of maintaining status-quo qua transfer of the land. Petitioner No.1 was not impleaded as party and, therefore, the document was presented. However, petitioner No.2/1 to 2/6 did not present for confession of the execution of the document since the injunction was granted by the learned Civil Judge. On 2-11-2001 the learned Civil Judge vacated the injunction by passing the order below Ex.5. However, upon the request of the plaintiff with a view to enable him to approach before the higher forum the ad-interim stay was extended upto 1-12-2001. Thereafter, appeal from order was preferred by the original plaintiff against petitioners No.2/1 to 2/6 challenging the order of the learned Civil Judge and the said appeal from order came up for hearing before this Court (Coram: S.D.Dave, J.) on 27-11-2001. It is the case of the petitioners No.2/1 to 2/6 that they remained present being caveator. However, this Court granted stay on the same day. Thereafter, ultimately the A.O. was heard by this Court (Coram: A.M.Kapadia, J.) and as per the order dated 20-3-2002, A.O. came to be dismissed and consequently the injunction granted in the appeal from order also came to be vacated.

4. After the aforesaid proceedings, the petitioners No.2/1 to 2/6 presented themselves for confessing execution of document for the registration. However, the Sub-Registrar declined to register since the time limit was over. The petitioner preferred appeal under the Indian Registration Act to the District Registrar and the Collector, Ahmedabad. The Collector passed the order, copy whereof is produced at Annexure "D". Of course, in the said order the date is not mentioned, but there is a

reference of noting of the file dated 6-1-2003, therefore, the learned Counsel for petitioners submitted that date is 6-1-2003. The District Collector in her capacity as District Registrar under the Registration Act passed the order for extension of time on payment of the penalty of Rs.71,250/= for document No.1965/2001 and the penalty of Rs.13,125/= for document No.1966/2001, total the penalty of Rs.84,375/=. It is under these circumstances, the petitioners have approached this Court for challenging the order for imposition of penalty.

5. I have heard Mr.Joshi, learned Counsel for the petitioners and Mr.Sood, learned AGP for the respondents.

6. There is no dispute on the point that the Collector has power to grant extension under the Registration Act in capacity as the District Registrar under the Registration Act. As such the extension of time has been granted and, therefore, this Court is not required to examine as to whether the extension of time should have been granted or it has been rightly granted or not. The fact remains that the extension of time was granted. Even otherwise also there was the injunction granted against petitioner 2/1 to 2/6 by competent Court and, therefore, it was a case for granting extension of time and such cause is rightly considered by the District Collector and the extension of time has been granted.

7. The question which is required to be considered is whether the District Registrar and Collector was justified in imposing the penalty for delay caused in remaining present for confessing the execution of the document or not. It is borne out from the proceedings of the Court that the injunction granted by the Civil Court and its continuation thereof by this Court was in operation from 19-6-2001 till 20-3-2002 and, therefore, during that period on account of the injunction granted by the competent Court and its higher forum, the petitioners No.2/1 to 2/6 who were executant of the document were justified in not presenting themselves for confession of the document. On the contrary, such conduct on the part of the petitioners can be said to be as that of law abiding citizens. If a party abides by the terms and conditions of the injunction granted by the competent authority or Court, no other authority has any right, competence or jurisdiction to penalize by way of imposing penalty. The Collector has also found that the injunction was there of the competent Court. However, since there is power to impose penalty under Section 75 of the Indian Registration Act, she has imposed penalty.

8. Section 75 of the Indian Registration Act provides that the order by Registrar to register the document and procedure thereon. Section 72 of the Act provides for appeal against the order of the Sub-Registrar refusing registration on ground other than denial of execution. Therefore, merely because there is power to impose penalty it does not mean that in every case the penalty should be imposed. It would vary from facts to facts. If there is a voluntary default on the part of the author or executant of the document possibly the authority could have imposed penalty on the basis of decgree of default. Even if it is a voluntary action, the aspect that whether there was any justifiable or unavoidable circumstance or not, will have to be examined by the authority at the time of imposition of penalty. But, in any case, whenever the person has not remained present for confession of the execution of the document on account of the prohibitory order of the competent Court, such ground in any circumstances cannot be said to be any default on the part of the author of the document. If there is no default on the part of the party and on the contrary the conduct of the executant of the document is that of law abiding citizen, there would not be any power on the part of the authority to impose penalty for such delay caused, which was on account of the injunction operating against the person concerned. As such, the judicial discipline and rule of law demands that whenever there is an injunction of any competent Court, it must be respected and should also be honored not only by the parties to the proceedings, but also by the other authority, who has to take into consideration the injunction granted by the competent Court unless the order is wholly without jurisdiction. In the present case, the Collector did find that there was an injunction of the Civil Court and the High Court. However, in spite of the same, penalty has been imposed. In my view, such an order of imposition of penalty by the Collector to a law-abiding citizen, who acted as per the order of injunction is not only without jurisdiction, but if it is allowed to stand, it would frustrate the basic principles of rule of law and of judicial discipline. It is required to be noted that the Collector, while exercising power under Section 72 of the Indian Registration Act is not acting as an Administrative Officer, but is acting as quasi-judicial Authority so far as imposition of penalty is concerned. All quasi-judicial authorities must abide by the orders of competent Court(s) and also respect the orders of competent Court(s). If one authority passes order and if the other authority does not respect the order, it would result into lawlessness situation.

Therefore, under any circumstances the order passed by the Collector for imposition of the penalty cannot be sustained in the eye of law. It was expected for the Collector to extend the time without imposition of penalty, in view of injunction of competent Court and conduct of petitioners No.2/1 to 2/6.

9. In view of the aforesaid discussion, the order at Annexure "D" passed by the District Registrar under the Registration Act and Collector, Ahmedabad of imposition of the penalty of Rs.71,250/= for document No.1965/2001 and of Rs.13,125/= for for document No.1966/2001, totalling penalty of Rs.84,375/= is quashed and set aside and the order for granting extension shall continue to operate without imposition of penalty. The consequential effect would be the Sub-Registrar shall allow the petitioners No.2/1 to 2/6 to present themselves for confessing the execution of the document for registration pursuant to the order passed by the Collector without payment of any penalty amount and shall take steps in accordance with law for the registration of the document. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No cost.

10. Before parting with I would like to observe that the copy of the order may be forwarded to the Secretary, Revenue Department, Government of Gujarat, with a view to ensure that whenever injunction is granted by competent Court, all authorities exercising power as quasi-judicial authority should and must respect the orders and, in any case, such injunction should not be treated as a ground for imposing penalty. Direct service is permitted.

31-7-2003 (Jayant Patel, J.)

vinod